

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

PHILIP E. COURTNEY,

Plaintiff,

v.

SYNERPRISE CONSULTING SERVICES,
INC.,

Defendant.

CIVIL COMPLAINT

CASE NO. 7:20-cv-00114

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes PHILIP E. COURTNEY (“Plaintiff”), by and through his attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of SYNERPRISE CONSULTING SERVICES, INC. (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. §227 *et seq.*, and the Texas Debt Collection Act (“TDCA”) under Tex. Fin. Code Ann. § 392 *et seq.* for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C. § 227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1337.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant resides in the Western District of Texas and a substantial portion the events or omissions giving rise to the claims occurred within the Western District of Texas.

PARTIES

4. Plaintiff is a consumer over 18 years-of-age residing within the Western District of Texas

5. Defendant is a collection agency. Defendant claims that it, “practices patient and compassionate debt collecting for the healthcare industry.”¹ Defendant’s principal place of business is located at 5651 Broadmoor Street, Mission, Kansas 66202.

6. Defendant’s registered agent, Michael R. Dorey, is located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, third-party contractors, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

8. The instant action stems from Defendant’s attempt to collect upon a defaulted medical bill (“subject debt”) that Plaintiff allegedly owed.

9. In early 2020, Plaintiff began receiving collection calls from Defendant to his cellular phone, (432) XXX-8431, attempting to collect upon the subject debt.

10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in -8431. Plaintiff is and always has been financially responsible for the cellular phone and its services.

¹ <http://www.synerpriseconsulting.com/>

11. Defendant has called Plaintiff mainly using the phone numbers, (432) 287-0506 and (903) 385-3279; however, upon information Defendant has employed other phone numbers as well.
12. Upon information and belief, the aforementioned phone numbers are regularly utilized by Defendant during its debt collection activity.
13. Upon answering calls from Defendant, Plaintiff typically experiences a noticeable pause, lasting several seconds in length, and often has to say “hello” a few times before he is greeted by a live representative.
14. Plaintiff, through his contacts with Defendant, was informed that Defendant was acting as a debt collector attempting to collect upon the subject debt.
15. Upon speaking to Defendant, Plaintiff explained to Defendant that he has many underlying health conditions and that he is unemployed. Plaintiff further explained that due to his financial difficulties he would not be able to satisfy his obligation on the subject debt.
16. Rather than showing compassion to Plaintiff’s difficult situation, Defendant bombarded Plaintiff with collection calls attempting to collect on the subject debt.
17. Due to Defendant’s harassing calls, Plaintiff demanded that Defendant cease contacting him.
18. Notwithstanding Plaintiff’s demand that Defendant’s collection calls cease, Defendant has systematically placed phone calls to Plaintiff cellular phone attempting to collect on the subject debt.
19. To date, Plaintiff has received at least 30 calls from Defendant since asking it to stop calling.
20. Frustrated and stressed over Defendant’s conduct, Plaintiff spoke with Sulaiman regarding his rights, resulting in exhausting time and resources.

21. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.
22. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of his telephone services, loss of cellular phone capacity, diminished cellular phone functionality, decreased battery life on his cellular phone, and diminished space for data storage on his cellular phone.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

23. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.
24. Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3) of the FDCPA.
25. Defendant is a “debt collector” as defined by §1692a(6) of the FDCPA, because it regularly uses the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.
26. Defendant is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others. Defendant identifies itself as a debt collector and has been a member of the ACA, an association of debt collectors, since 2003.²
27. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be due to another for personal, family, or household purposes

a. Violations of the FDCPA §1692c(a)(1) and §1692d

28. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring

² <http://www.acainternational.org/search#memberdirectory>

or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”

29. Defendant violated §1692c(a)(1), d, and d(5) when it repeatedly called Plaintiff after being notified to stop. This behavior of systematically calling Plaintiff’s phone on a systematic basis in spite of his demands was harassing and abusive. The frequency and volume of calls shows that Defendant willfully ignored Plaintiff’s pleas with the goal of annoying and harassing him.

30. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant knew that its conduct was inconvenient and harassing to Plaintiff.

b. Violations of FDCPA § 1692e

31. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

32. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

33. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject debt. In spite of the fact that Plaintiff demanded that it stop contacting him, Defendant continued to contact Plaintiff. Instead of putting an end to this harassing behavior, Defendant placed repeated calls to Plaintiff’s cellular phone in a deceptive attempt to force him to answer its calls and ultimately make a payment. Through its conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact him after he demanded that it stop calling.

c. Violations of FDCPA § 1692f

34. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

35. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on a debt by continuously calling Plaintiff after being notified to stop. Attempting to coerce Plaintiff into payment by using harassing and voluminous phone calls without his permission is unfair and unconscionable behavior. These means employed by Defendant only served to worry and confuse Plaintiff.

36. As pled in paragraphs 19 through 22, Plaintiff has been harmed and suffered damages as a result of Defendant’s illegal actions.

WHEREFORE, Plaintiff, PHILIP E. COURTNEY, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3);
- e. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject debt; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

37. Plaintiff repeats and realleges paragraphs 1 through 36 as though fully set forth herein.
38. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) *or* prerecorded messages

without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

39. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. The significant pause, lasting several seconds in length, which Plaintiff has experienced during answered calls is instructive that an ATDS was being utilized to generate the phone calls. Additionally, Defendant’s continued contacts to Plaintiff after he demanded that the phone calls stop further demonstrates Defendant’s use of an ATDS. Moreover, the nature and frequency of Defendant’s contacts points to the involvement of an ATDS.

40. Defendant violated the TCPA by placing at least 30 phone calls to Plaintiff’s cellular phone using an ATDS without his consent. Any consent that Plaintiff *may* have given to the originator of the subject consumer debt, which Defendant will likely assert transferred down, was specifically revoked by Plaintiff’s demands that it cease contacting him.

41. The calls placed by Defendant to Plaintiff were regarding collection activity and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

42. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant’s willful and knowing violations of the TCPA should trigger this Honorable Court’s ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, PHILIP E. COURTNEY, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;

- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject consumer debt; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT III – VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT

- 43. Plaintiff restates and realleges paragraphs 1 through 42 as though fully set forth herein.
- 44. Plaintiff is a “consumer” as defined by Tex. Fin. Code Ann. § 392.001(1).
- 45. Defendant is a “debt collector” and a “third party debt collector” as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).
- 46. The subject debt is a “consumer debt” as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes.

a. Violations of TDCA § 392.304

- 47. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.302(4), states that “a debt collector may not oppress, harass, or abuse a person by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.”

48. Furthermore, the TDCA, under Tex. Fin. Code Ann. § 392.304(19), further prohibits a debt collector from “using any other false representation or deceptive means to collect a debt . . .”

49. Defendant violated the TDCA when it repeatedly called Plaintiff after being notified to stop. This behavior of systematically calling Plaintiff’s phone on a systematic basis in spite of his demands that such calls cease, was harassing and abusive. The frequency and volume of calls

shows that Defendant willfully ignored Plaintiff's pleas with the goal of annoying and harassing him.

50. Furthermore, Defendant violated the TDCA when it used deceptive means to collect and/or attempt to collect the subject debt. In spite of the fact that Plaintiff demanded that it stop contacting him, Defendant continued to contact Plaintiff. Instead of putting an end to this harassing behavior, Defendant placed repeated calls to Plaintiff's cellular phone in a deceptive attempt to force him to answer its calls and ultimately make a payment. Through its conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact him after he demanded that it stop calling.

WHEREFORE, Plaintiff, PHILIP E. COURTNEY, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1).
- c. Awarding Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2).
- d. Awarding Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Awarding Plaintiff costs and reasonable attorney fees, pursuant to Tex. Fin. Code Ann. § 392.403(b);
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: May 8, 2020

s/ Nathan C. Volheim (Lead Attorney)
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Respectfully submitted,

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